In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1260

CHRISTIAN CHRISTIANSEN, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On March 19, 1965, a special agent of the Internal Revenue Service served petitioner, in his capacity as officer or director of three corporations, with three summonses pursuant to § 7602 of the Internal Revenue Code of 1954 (R. 3a, 8a-9a, 11a, 14a-15a).[1] These summonses called for the production of certain *corporate* books and records; no personal papers were sought

[1] "R." references are to the appendix filed by the appellant in the court of appeals.

(R. 3a). Petitioner appeared as directed but refused to comply with the summonses, asserting his personal privilege against self-incrimination (R. 9a, 11a, 15a).

The instant action was then begun to enforce compliance with the summonses (R. 7a-12a). In opposition, petitioner argued only that the corporate records were clothed with his personal privilege against self-incrimination, inasmuch as he was the sole shareholder of two of the corporations (R. 12a-16a).[2] The district court rejected this argument and ordered the corporate records produced; the Third Circuit affirmed *per curiam* (Pet. 15-16).

This Court has consistently held that a stockholder, officer or other custodian of corporate records may not interpose his personal privilege against self-incrimination when called upon to produce corporate records in his possession. *Wilson* v. *United States*, 221 U.S. 361; *Wheeler* v. *United States*, 226 U.S. 478, 490; *Grant* v. *United States*, 227 U.S. 74, 79-80; *Essgee Co.* v. *United States*, 262 U.S. 151; *United States* v. *White*, 322 U.S. 694, 699-700; *Nilva* v. *United States*, 352 U.S. 385, 392; *Curcio* v. *United States*, 354 U.S. 118, 122, 124-125, 128. Indeed, this Court was squarely faced with the precise issue here presented in the

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[2] As to the third corporation, petitioner alleged that his only connection with it had been to act as an officer in its dissolution as an accommodation to his brother, who was its sole shareholder (R. 15a). In view of these facts it appears he does not have even a colorable claim of privilege as to the books of that corporation.

Grant case, *supra*;[3] it held that the privilege was unavailable even to "the sole stockholder" of the corporation. 227 U.S. at pp. 77, 80.[4]

Contrary to petitioner's suggestion (Pet. 10), *United States* v. *White* in no way departs from this settled principle. This Court's *White* opinion not only explicitly reaffirmed the principles enunciated in the above cases, it extended this principle ever further,

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[3] Petitioner's attempt to relegate this holding to dictum (Pet. 11) is incorrect, for the attorney in that case who held the records was attempting to assert his client's (the sole shareholder's) privilege against self-incrimination. Thus it was necessary for this Court to determine whether the client-sole shareholder could have invoked the privilege.

[4] This same view has been expressed recently with approval by various courts of appeals. As the Second Circuit held in *Hair Industry, Ltd.* v. *United States*, 340 F. 2d 510, 511, certiorari denied, 381 U.S. 950:

> Indeed, *United States* v. *White* reiterated the rule that the privilage cannot be utilized on behalf of a corporation. 322 U.S. at 699, 64 S. Ct. at 1251. Today, with the tax consequences vis-à-vis the sovereign flowing from the use of the corporate form—income accumulation possible under some circumstances free from personal income tax, for example—the visitorial powers are more than ever necessary to the sovereign, and justify the courts in holding that any claim to the personal privilege is relinquished as to corporate records by the choice of the corporate form for an individual's business. Corporate records, which would tend to incriminate a corporate officer, can be subpoenaed even where the corporation is a mere alter ego of its owner. [Citations omitted.]

Accord, *United States* v. *Fago*, 319 F. 2d 791, 792-793 (C.A. 2), certiorari denied, 375 U.S. 906; *United States* v. *Guterma*, 272 F. 2d 344, 346 (C.A. 2); *Wild* v. *Brewer*, 329 F. 2d 924 (C.A. 9), certiorari denied, 379 U.S. 914; *Wright* v. *Detwiler*, 345 F. 2d 1012 (C.A. 3).

holding that in some situations the officers or members of even an *unincorporated* assocation may be denied the privilege against self-incrimination with respect to assocation records. Thus the *White* case does not represent any departure from or limitation on this Court's well established holdings regarding the nonapplicability of a personal privilege to *corporate* records.

For these reasons the petition for a writ of certiorari should be denied.

Respectfully submitted.

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